

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 25, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

Voluntary Forfeiture of General Lease No. S-3729, Jean N. Shintani, Trustee of the Jean N. Shintani Revocable Living Trust, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-2-50:78.

PURPOSE:

Voluntary forfeiture of General Lease No. S-3729, Jean N. Shintani, Trustee of the Jean N. Shintani Revocable Living Trust, Lessee whose mailing address is 68 Malama Street, Hilo, Hawaii 96720.

LEGAL REFERENCE:

Section 171-39, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea, South Hilo, Hawaii, identified by Tax Map Key: 3rd/2-2-50:78, as shown on the attached map labeled Exhibit A.

AREA:

.242 acres, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

General industrial purposes.

TERM OF LEASE:

55 years, commencing on August 23, 1963 and expiring on August 22, 2018. Last rental reopening occurred on August 23, 2003; next rental reopening is scheduled for August 23, 2013.

ANNUAL RENTAL:

\$6,550.00. due in quarterly payments.

REMARKS:

Pursuant to the authority granted the Chairperson by the Board of Land and Natural Resources at its meeting of January 11, 1980 and the breach provision contained in General Lease S-3729, Jean N. Shintani, Trustee of the Jean N. Shintani Revocable Living Trust, Lessee, was served a Notice of Default by certified mail dated June 26, 2006 for:

- ☐ Failure to keep lease rental payments current
- ☒ Failure to post required performance bond
- ☐ Failure to post required fire insurance policy
- ☒ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on July 1, 2006, offered the Lessee a ninety-day cure period to correct the default. This cure period will expire on September 28, 2006. As of August 10, 2006, this breach has not been cured.

Lessee was also served a Notice of Default by certified mail dated June 29, 2006 for:

- ☐ Failure to keep lease rental payments current
- ☐ Failure to post required performance bond
- ☒ Failure to post required fire insurance policy
- ☒ Failure to post required liability insurance policy

Said notice, accepted by the Lessee on July 1, 2006, offered the Lessee a ninety-day cure period to correct the default. This cure period will expire on September 28, 2006. As of August 10, 2006, this breach has not been cured.

As of August 10, 2006, the current status of all lease compliance items is as follows:

RENT: The Lessee is current with all rent obligations.

INSURANCE: The Lessee has not posted the required liability and fire insurance policy.

PERFORMANCE

BOND: The Lessee has posted the required performance bond. This bond is in the form of a credit union share certificate (No. 35897, HFSFCU).

OTHER: Possible ground contamination resulting from the storage of leaking oil drums and heavy equipment on property.

After the 1960 tsunami, Act 32, Session Laws of Hawaii 1962, authorized the Department to enter into direct negotiation of leases or lease with option to purchase of public lands to victims of natural disaster. Pursuant to the subject law, General Lease No. S-3729, was issued to Hubert S. Andrews, dba Andrews Trucking Service of Hilo, Hawaii effective on 8/23/1963 for a term of fifty-five (55) years.

The Lessee, Hubert S. Andrews died without a will on 7/7/1968. A probate proceeding opened in 1968 in the Third Circuit Court. The probate was closed in 1975 with the distribution of the probate assets amongst his heirs, Claire B. Andrews, Rowena E. Jones and Hugh E. Andrews and Masako I. Andrews with a dower interest. However, according to a review of the probate court records, the subject General Lease was not listed as an asset of the estate and title was never transferred to the heirs or Mr. & Mrs. Sebastian Andrews, owners of Andrews Trucking Services, Inc., successors to Andrews Trucking Services, Hilo, Hawaii.

The corporate entity, or the predecessor Andrews Trucking Service business had, since 1968, utilized the property, paid the rent, taxes, and had performed the duties under the lease.

The Board, at its meeting of 6/9/1994, under agenda F-1-a approved the consent to assignment of lease from Claire B. Andrews, Rowena E. Jones, Hugh E. Andrews as heirs of Hubert S. Andrews and Masako I. Andrews, widow of Hubert S. Andrews, dower, as Assignors to Sebastian Andrews and Christina Andrews as Assignee and Sebastian Andrews and Christina Andrews as Assignor to Minoru Shintani and Jean Shintani, Trustees of the Minoru Shintani Family Revocable Trust. as Assignee.

Further, at its meeting of 8/28/1998 under agenda item D-14, the Board consented to the assignment of lease from Jean Shintani, Trustee of the Minoru Shintani Family Revocable Trust dated September 30, 1992 as Assignor, to Jean Shintani, Trustee of the Jean Shintani Revocable Living Trust dated February 17, 1998 as Assignee.

In a letter written to the Department of Land and Natural Resources (Exhibit B), Carolyn Oshiro, attorney for Jean Shintani explained that due to the deteriorating health of Ms. Shintani, she now requires constant care and is residing at the Life Care Center of Hilo. Consequently, she is no longer able to manage her affairs or the leasehold property and has requested an early termination of its lease with the State. The Trust has little to no assets other than the State lease and it has become a burden for the Trust to keep the lease rent current.

It was further explained that unless the State lease can be terminated shortly, Ms. Shintani is a risk of not qualifying for Medicaid and of not having sufficient funds to pay her care at the Life Care Center of Hilo. The Trust is therefore requesting the Board consider an early termination of the lease and has indicated a willingness to waive the ninety-day cure period as required by the lease.

There still remains the matter of the possible contamination of the property from oil drums and assorted industrial equipment observed on the premises during a site inspection in May, 2006. A Phase I and II, Environmental Assessment will have to be conducted to assess the extent of the problem. Additionally, the property has been severely neglected and may require significant repairs before it can be leased.

Staff is recommending that the Board approve a voluntary forfeiture of the lease conditioned on the waiver of the lessee's right to the remainder of the cure period in connection with the Notice of Default and an acknowledgement that the lessee is not released from any liability for rent, environmental cleanup or necessary repairs of the premises.

Staff is also recommending that the approval for voluntary forfeiture be conditioned upon the lessee's release of the certificate of deposit that was provided as security for the performance bond.

RECOMMENDATION: That the Board:

1. Authorize the cancellation of General Lease No. S-3729 in the manner specified by law, subject to the following:
 - a. Lessee shall acknowledge its waiver of the required 90 day cure period in connection with the Notices of Default cited above. Such acknowledgment shall be in a form acceptable to the Department of the Attorney General;
 - b. Pursuant to the Performance Bond Agreement dated December 21, 2004, Lessee shall release the credit union share certificate (No. 35897, HFSFCU) to the State of Hawaii; and
 - c. Lessee shall acknowledge that it is not released from any liability stemming from General Lease No. S-3729. Such acknowledgment shall be in form acceptable to the Department of the Attorney General;
 - d. Review and approval by the Department of the Attorney General; and
 - e. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the retention of all sums heretofore paid or pledged under General Lease No. S-3729 as liquidated damages;

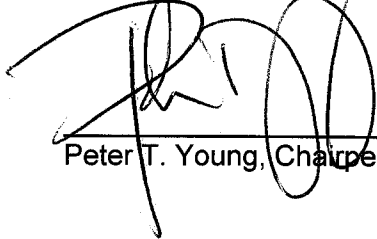
3. Terminate the lease and all rights of Lessee and all obligations of the Lessor effective as of **August 25, 2006**, provided that any and all obligations of the Lessee which have accrued up to said effective date or which are stated in the lease to survive termination shall endure past such termination date until duly fulfilled, and further provided that Lessor reserves all other rights and claims allowed by law; and
4. Authorize the Department of the Attorney General, the Department of Land and Natural Resources, or their agents to collect all monies due the State of Hawaii under General Lease No. S-3729 and to pursue all other rights and remedies as allowed by law for environmental remediation or repairs to the premises.

Respectfully Submitted,



Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

TMK: 3RD/2-2-50:78





August 8, 2006

Mr. Peter T. Young, Chairperson
State of Hawaii
DLNR
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

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RECEIVED
LAND DIVISION
HILO, HAWAII

Mr. Harry M. Yada, District Land Agent
State of Hawaii
Hawaii District Branch
DLNR, Land Division
75 Aupuni Street, Room 204
Hilo, Hawaii 96720

Re: TMK: (3) 2-2-050-078 ("Property")

Dear Messrs. Young and Yada

We represent Jean N. Shintani, Trustee of the Jean N. Shintani Revocable Living Trust dated February 17, 1998 (the "Trust"). The Trust leases the above-referenced property from the State of Hawaii.

Due to Ms. Shintani's declining medical condition, the Trust requests that its lease with the State be terminated. Per Ms. Shintani's physician, she is suffering from dementia and is no longer able to manage her property or affairs. Unfortunately, her doctor does not see her condition improving. Ms. Shintani now requires constant care and is residing at the Life Care Center of Hilo. Consequently, Ms. Shintani is not in a position to either manage or operate the Property which presently has no tenants and is sitting vacant.

It is also our understanding that the Trust has little to no assets and that the State lease is considered her major asset. With her limited assets, Ms. Shintani has struggled to keep the lease payments current, but this is no longer possible. Unless the State lease can be terminated shortly, Ms. Shintani is at risk of not qualifying for Medicaid and of not having sufficient funds to pay for her care at the Life Care Center of Hilo. Therefore, it is imperative that the lease be terminated as soon as possible and we ask that the termination be expedited. Given Ms. Shintani's apparent irreversible condition, an early termination would also benefit the State enabling it to relet the



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Mr. Harry M. Yada
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property rather than leaving it vacant. The Trust is willing to waive time constraints or notice periods if it will facilitate the termination of the Lease.

This letter also responds to the State's Notice of Default dated June 26, 2006 with respect to the Performance Bond. We understand that a Performance Bond does exist. However, the Credit Union, where the Bond is located, may not have the correct contact person for the State. The contact person would be able to access information on the Bond. Per our understanding, the current contact person of record for the State is Juliet Kazanjian who we understand is no longer with the State. Per the Credit Union, the State should send a letter to the Credit Union explaining that Ms. Kazanjian is no longer the contact person on the account and include the name and address of the new contact person. Upon receipt, the Credit Union will mail DLNR the necessary forms to complete and return. Once the forms are processed, the Credit Union will release information to the person listed on the new forms. The Credit Union can be contacted as follows:

HFS Federal Credit Union
632 Kinoole Street
Hilo, Hawaii 96720-3894
Account No. 53897

The contact person at the Credit Union is Brenda K. L. Lee, telephone 961-2666. The names on the account are Jean N. Shintani and the State of Hawaii DLNR.

We would appreciate it if you would contact us immediately to discuss the termination of the lease.

Very truly yours,

CHAR SAKAMOTO ISHII LUM & CHING

Vernon F.L. Char
Carolyn M. Oshiro